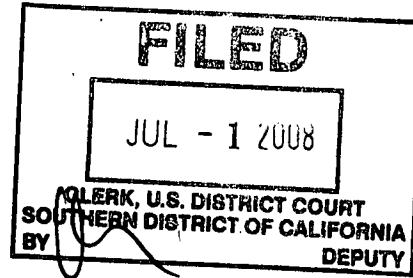


ORIGINAL

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United States of America



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,) Criminal Case No. 04CJ0098-JAH
12 Plaintiff,)
13 v.) PLEA AGREEMENT
14 RAFAEL SANTIAGO-VASQUEZ (2),) (Pre-Indictment Fast-Track Program)
15 Defendant.)
16)

17 IT IS HEREBY AGREED between the plaintiff, UNITED STATES OF
18 AMERICA, through its counsel, Karen P. Hewitt, United States Attorney,
19 and W. Mark Conover, Assistant United States Attorney, and defendant,
20 RAFAEL SANTIAGO-VASQUEZ, with the advice and consent of ^{Karen} Hanni
21 ^{STEVE} Falkhour, counsel for defendant, as follows:

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28 | WMC:jam:6/11/08

Def. Initials P.S.U.

II

THE PLEA

3 A. The Charge. Defendant agrees to waive Indictment and plead
4 guilty to a single-count Information charging defendant with:

On or about June 8, 2008, within the Southern District of California, defendant RAFAEL SANTIAGO-VASQUEZ, with the intent to violate the immigration laws of the United States, did bring or attempt to bring to the United States an alien, namely, Adolfo Talamantes-Rocha, knowing that said person was an alien, at a place other than a designated port of entry and at a place other than as designated by the Department of Homeland Security; in violation of Title 8, United States Code, Section 1324(a)(1)(A)(i) and (V)(II).

11 This plea agreement is part of a "package" disposition. In order
12 for defendant to receive the benefit of this agreement, codefendant
13 JOSE LUIS GOMEZ-HERNANDEZ also must plead guilty at the same time.
14 See Section VI E. below.

15 B. Early Disposition (Fast-Track) Program. The disposition
16 contemplated by this plea agreement is pursuant to an early
17 disposition (Fast-Track) program authorized by the Attorney General
18 of the United States and the United States Attorney for the Southern
19 District of California.

20 C. Program Requirements. As part of this plea agreement, and
21 as set forth in Section X.A.5. below, the United States will move the
22 Court to depart downward two offense levels under USSG § 5K3.1
23 provided defendant complies with the following early disposition
24 (Fast-Track) program requirements, to which defendant specifically
25 agrees:

26 1. to waive indictment on or before the first preliminary
27 hearing date;

1 2. to stipulate in writing on or before the first
2 preliminary hearing date that:

3 a. the material witnesses:

4 (1) are aliens with no lawful right to enter or
5 remain in the United States;

6 (2) entered the United States illegally on or
7 about a date certain;

8 (3) were found in rural terrain near the
9 international border with Mexico and for whom defendant was the guide,
10 and defendant knew they were aliens with no lawful right to enter or
11 remain in the United States;

12 (4) were paying or having others pay on their
13 behalf, to defendant or others to be brought into the United States
14 illegally and/or transported illegally to their destination therein;
15 and,

16 (5) may be released and remanded immediately to
17 the Department of Homeland Security for return to their country of
18 origin.

19 (b) after the material witnesses are ordered released
20 by the Court pursuant to this motion, if defendant does not plead
21 guilty to the charge described above, for any reason, or thereafter
22 withdraws his guilty plea to that charge, defendant agrees that in any
23 proceeding, including, but not limited to, motion hearings, trial,
24 sentencing, appeal or collateral attack, that:

25 (1) the stipulated facts set forth in paragraph
26 c. (2) (a) (1) - (5) above shall be admitted as substantive evidence;

27 (2) the United States may elicit hearsay
28 testimony from arresting agents regarding any statements made by the

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08 CR 2098

1 material witness(es) provided in discovery, and such testimony shall
 2 be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as
 3 statements against interest of (an) unavailable witness(es); and,
 4 (3) understanding that under Crawford v.
Washington, 124 S. Ct. 1354 (2004), "testimonial" hearsay statements
 5 are not admissible against a defendant unless defendant confronted and
 6 cross-examined the witness(es) who made the "testimonial" hearsay
 7 statements, defendant waives the right to confront and cross-examine
 8 the material witness(es) in this case.

10 3. to execute and file a Waiver of Indictment and a
 11 Stipulation of Fact and Joint Motion for Release of Material
 12 Witness(es) at the first preliminary hearing date;

13 4. to file or argue no substantive motions, including
 14 those described in Fed. R. Crim. P. 12;

15 5. to plead guilty to the charge within 30 days of
 16 arraignment on the complaint initially filed against defendant;

17 6. to waive the right to appeal or collaterally attack the
 18 plea, conviction, or sentence; and,

19 7. if defendant is illegally in the United States, to
 20 stipulate and agree to an order of removal from the United States
 21 entered by Executive Office for Immigration Review or authorized
 22 Department of Homeland Security official, and unconditionally waives
 23 all rights to appeal, reopen, or collaterally attack the order of
 24 removal (see Section XI [Defendant Waives Appeal and Collateral
Attack] below).

26 D. Timeliness/Offer Revocation. The disposition contemplated
 27 by this agreement is conditioned on (1) the original plea agreement
 28 being signed by defendant and defense counsel and returned to

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08 CR 2098

1 Government counsel not later than five business days before the
2 disposition date, and (2) the guilty plea being entered on or before
3 July 10, 2008. Therefore, in the event that defendant seeks a delay
4 in the disposition in this case to a date beyond 30 days of
5 arraignment, or otherwise fails to comply with these timeliness
6 requirements, the United States may in its sole discretion revoke the
7 disposition offer contained in this plea agreement and seek
8 defendant's indictment on the underlying charge(s).

9 E. No Prosecution on Mandatory Minimum Count. In exchange for
10 defendant's guilty plea and sentencing on the single-count Information
11 and provided defendant complies fully with all terms of this plea
12 agreement, the Government agrees not to charge him/her with violating
13 8 U.S.C. § 1324(a)(2)(B)(ii), which, under the facts of this case,
14 carries a five-year mandatory minimum sentence.

15 F. Forfeiture. The defendant further agrees to the
16 administrative and/or civil forfeiture of all properties seized in
17 connection with this case which the defendant agrees are subject to
18 forfeiture to the United States pursuant to Title 8, United States
19 Code, Section 1324(b). The defendant further waives his right to
20 receive timely notice of administrative forfeiture as set forth in 18
21 U.S.C. § 983(a) and waives receipt of all notice of forfeiture in this
22 and all other administrative and civil proceedings. Defendant
23 warrants and represents as a material fact that all property in which
24 he has any interest may be forfeited as described above.

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DB CR 2008

1 II
23 NATURE OF THE OFFENSE
45 A. ELEMENTS EXPLAINED
6

7 Defendant understands that the offense to which defendant is
8 pleading guilty has the following elements:

- 9 1. Defendant brought a person who was an alien into the
10 United States at a place other than a designated port
11 of entry or at a place other than as designated by a
12 United States immigration official;
2. Defendant knew that the person was an alien; and,
3. Defendant acted with the intent to violate the United
10 States immigration laws by assisting that person to
11 enter the United States at a time or place other than
12 as designated by a United States immigration official
or to otherwise elude United States immigration
officials.

13 B. ELEMENTS UNDERSTOOD AND ADMITTED - FACTUAL BASIS
14

15 Defendant has fully discussed the facts of this case with defense
16 counsel. Defendant has committed each of the elements of the crime,
17 and admits that there is a factual basis for this guilty plea. The
following facts are true and undisputed:

- 18 1. On June 8, 2008, defendant guided 15 aliens including
19 Adolfo Talamantes-Rocha into the United States from
Mexico in Echo Canyon, near the Campo, California Port
of Entry.
2. Defendant knew that Adolfo Talamantes-Rocha was an
alien.
3. The material witness was paying \$1,500 to others to be
brought into the United States illegally and
transported illegally to his destination therein.
4. Defendant acted with the intent to violate the United
States immigration laws by assisting Adolfo
Talamantes-Rocha to enter the United States at a time
or place other than as designated by a United States
immigration official or to otherwise elude United
States immigration officials.

27 //

28 //

III

PENALTIES

3 Defendant understands that the crime to which defendant is
4 pleading guilty carries the following penalties:

- A. a maximum 10 years in prison;
 - B. a maximum \$250,000 fine;
 - C. a mandatory special assessment of \$100.00 per count; and
 - D. a term of supervised release of 3 years. Defendant understands that failure to comply with any of the conditions of supervised release may result in revocation of supervised release, requiring Defendant to serve in prison all or part of the term of supervised release.

IV

DEFENDANT'S WAIVER OF TRIAL RIGHTS

Defendant understands that this guilty plea waives the right to:

- A. continue to plead not guilty and require the Government to prove the elements of the crime beyond a reasonable doubt;
 - B. a speedy and public trial by jury;
 - C. the assistance of counsel at all stages of trial;
 - D. confront and cross-examine adverse witnesses;
 - E. present evidence and to have witnesses testify on behalf of defendant; and,
 - F. not testify or have any adverse inferences drawn from the failure to testify.

v

DEFENDANT ACKNOWLEDGES NO PRETRIAL RIGHT TO BE
PROVIDED WITH IMPEACHMENT AND AFFIRMATIVE DEFENSE INFORMATION

24 The Government represents that any information establishing the
25 factual innocence of defendant known to the undersigned prosecutor in
26 this case has been turned over to defendant. The Government will
27 continue to provide such information establishing the factual
28 innocence of defendant.

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08 CR 2098

1 Defendant understands that if this case proceeded to trial, the
2 Government would be required to provide impeachment information
3 relating to any informants or other witnesses. In addition, if
4 defendant raised an affirmative defense, the Government would be
5 required to provide information in its possession that supports such
6 a defense. Defendant acknowledges, however, that by pleading guilty
7 defendant will not be provided this information, if any, and
8 Defendant also waives the right to this information. Finally,
9 defendant agrees not to attempt to withdraw the guilty plea or to file
10 a collateral attack based on the existence of this information.

VI

**DEFENDANT'S REPRESENTATION THAT GUILTY
PLEA IS KNOWING AND VOLUNTARY**

Defendant represents that:

- A. Defendant has had a full opportunity to discuss all the facts and circumstances of this case with defense counsel, and has a clear understanding of the charges and the consequences of this plea;
 - B. No one has made any promises or offered any rewards in return for this guilty plea, other than those contained in this agreement or otherwise disclosed to the court;
 - C. No one has threatened defendant or defendant's family to induce this guilty plea; and,
 - D. Defendant is pleading guilty because in truth and in fact defendant is guilty and for no other reason.
 - E. "Package" Disposition. Further, defendant expressly acknowledges his understanding that the disposition contemplated by this agreement is part of a "package" disposition with his codefendant JOSE LUIS GOMEZ-HERNANDEZ, wherein the Government's obligations under the agreement are conditioned on the performance by defendant and his codefendant of their obligations under the agreement.

26 //

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2 **VII**
34 **AGREEMENT LIMITED TO U.S. ATTORNEY'S OFFICE**
5 **SOUTHERN DISTRICT OF CALIFORNIA**6 This plea agreement is limited to the United States Attorney's
7 Office for the Southern District of California, and cannot bind any
8 other federal, state or local prosecuting, administrative, or
9 regulatory authorities, although the Government will bring this plea
10 agreement to the attention of other authorities if requested by the
11 defendant.12 **VIII**
1314 **APPLICABILITY OF SENTENCING GUIDELINES**15 Defendant understands the sentence imposed will be based on the
16 factors set forth in 18 U.S.C. § 3553(a). Defendant understands
17 further that in imposing the sentence, the sentencing judge must
18 consult the United States Sentencing Guidelines (Guidelines) and take
19 them into account. Defendant has discussed the Guidelines with
20 defense counsel and understands that the Guidelines are only advisory,
21 not mandatory, and the court may impose a sentence more severe or less
22 severe than otherwise applicable under the Guidelines, up to the
23 maximum in the statute of conviction. Defendant understands further
24 that the sentence cannot be determined until a presentence report has
25 been prepared by the U.S. Probation Office and defense counsel and the
26 Government have had an opportunity to review and challenge the
27 presentence report. Nothing in this plea agreement shall be construed
28 as limiting the Government's duty to provide complete and accurate
 facts to the district court and the U.S. Probation Office.

29 //

30 //

1
IX2
SENTENCE IS WITHIN SOLE DISCRETION OF JUDGE

3 This plea agreement is made pursuant to Federal Rule of Criminal
4 Procedure 11(c)(1)(B). Defendant understands that the sentence is
5 within the sole discretion of the sentencing judge. The Government
6 has not made and will not make any representation as to what sentence
7 defendant will receive. Defendant understands that the sentencing
8 judge may impose the maximum sentence provided by statute, and is also
9 aware that any estimate of the probable sentence by defense counsel
10 is a prediction, not a promise, and is not binding on the Court.
11 Likewise, the recommendation made by the Government is not binding on
12 the Court, and it is uncertain at this time what defendant's sentence
13 will be. Defendant also has been advised and understands that if the
14 sentencing judge does not follow any of the parties' sentencing
15 recommendations, defendant nevertheless has no right to withdraw the
16 plea.

17
X18
PARTIES' SENTENCING RECOMMENDATIONS19
A. SENTENCING GUIDELINE CALCULATIONS

20 Although the parties understand that the Guidelines are only
21 advisory and just one of the factors the court will consider under
22 18 U.S.C. § 3553(a) in imposing a sentence, the parties will jointly
23 recommend the following Base Offense Level, Specific Offense
24 Characteristics, Adjustments and Departures (if applicable):

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08 CR 2018

- 1 1. Base Offense Level [USSG § 2L1.1(a)(3)] 12
 2 2. Number of Aliens [USSG § 2L1.1(b)(2)] +3
 3 3. Prior Immigration Felony [USSG § 2L1.1(b)(3)] 0*
 4 4. Acceptance of Responsibility [USSG § 3E1.1] +2
 5 5. Departure for Fast Track [USSG § 5K3.1] -2 R.S.V.
 6 P
 7 10/11
 8 J.R.S.J.

9 Total Offense Level
 10 *There is no agreement regarding defendant's criminal history
 11 category. However, if defendant has previously sustained a conviction
 12 for a felony immigration and naturalization offense, the parties will
 13 recommend a +2 adjustment, pursuant to USSG 2L1.1(b)(3)(A). If
 14 defendant has previously sustained two or more such felony immigration
 15 convictions, the parties will recommend a +4 adjustment, pursuant to
 16 USSG 2L1.1(b)(3)(B).

17 B. ACCEPTANCE OF RESPONSIBILITY

18 Notwithstanding paragraph A.4 above, the Government will not
 19 recommend any adjustment for Acceptance of Responsibility if
 20 defendant:

- 21 1. Fails to admit a complete factual basis for the plea
 22 at the time it is entered, or
 23 2. Denies involvement in the offense, gives conflicting
 24 statements about that involvement, or is untruthful
 25 with the Court or probation officer, or
 26 3. Fails to appear in court, or
 27 4. Engages in additional criminal conduct, or
 28 5. Attempts to withdraw the plea, or
 29 6. Refuses to abide by any lawful court order.
 30 7. Contests or assists any third party in contesting the
 31 forfeiture of property(ies) seized or forfeited in
 32 connection with this case.

33 //

34 //

1 C. ADJUSTMENTS AND SENTENCE REDUCTIONS UNDER 18 U.S.C. § 3553

2 The parties agree not to recommend any upward or downward
 3 adjustments other than those listed above, or other sentence
 4 reductions under 18 U.S.C. § 3553.

5 D. NO AGREEMENT AS TO CRIMINAL HISTORY CATEGORY

6 The parties have **no** agreement as to defendant's Criminal History
 7 Category.

8 E. DEPARTURES AND SENTENCE REDUCTIONS UNDER 18 U.S.C. § 3553

9 The parties agree not to recommend any upward or downward
 10 departures, including any criminal history departures under USSG
 11 § 4A1.3, or other sentence reductions under 18 U.S.C. § 3553.

12 F. "FACTUAL BASIS" AND "RELEVANT CONDUCT" INFORMATION

13 The parties agree that the facts in the "factual basis" paragraph
 14 of this agreement are true, and may be considered as "relevant
 15 conduct" under USSG § 1B1.3 and as the nature and circumstances of the
 16 offense under 18 U.S.C. § 3553(a)(1).

17 G. PARTIES' RECOMMENDATIONS REGARDING CUSTODY

18 The parties agree that the Government will recommend that
 19 defendant be sentenced to the low end of the advisory guideline range
 20 as calculated by the Government pursuant to this agreement. However,
 21 if the Court adopts an offense level or downward adjustment or
 22 departure below the Government's recommendations in this plea
 23 agreement, the Government will recommend a sentence as near as
 24 possible to what the sentence would have been if the Government's
 25 recommendations had been followed.

26 H. SPECIAL ASSESSMENT

27 The parties will jointly recommend that defendant pay a special
 28 assessment in the amount of \$100.00 to be paid forthwith at time of

1 sentencing. The special assessment shall be paid through the office
2 of the Clerk of the District Court by bank or cashier's check or money
3 order made payable to the "Clerk, United States District Court."

I. STIPULATED REMOVAL

If defendant is not a United States citizen or national, either before or immediately following sentencing, defendant agrees to an order of removal from the United States entered by Executive Office for Immigration Review or authorized Department of Homeland Security official. Defendant understands that defendant will not be removed until defendant has served any criminal sentence imposed in this or any other case. Defendant further waives any right to appeal, reopen or challenge the removal order.

XI

DEFENDANT WAIVES APPEAL AND COLLATERAL ATTACK

In exchange for the Government's concessions in this plea agreement, defendant waives, to the full extent of the law, any right to appeal or to collaterally attack the conviction and sentence, including any restitution order, unless the Court imposes a custodial sentence above the greater of the high end of the guideline range recommended by the Government pursuant to this agreement at the time of sentencing or statutory mandatory minimum term, if applicable. If the custodial sentence is greater than the high end of that range, the defendant may appeal, but the Government will be free to support on appeal the sentence actually imposed. If defendant believes the Government's recommendation is not in accord with this agreement, defendant will object at the time of sentencing; otherwise the objection will be deemed waived.

If defendant breaches this plea agreement, at any time, by appealing or collaterally attacking the conviction or sentence, in any way, the Government may prosecute defendant for any counts, including those with mandatory minimum sentences, dismissed or not charged pursuant to this plea agreement. Additionally, the Government may use any factual admissions made by defendant pursuant to this plea agreement in any such prosecution.

XII

CRIMES AFTER ARREST OR BREACH OF THE AGREEMENT WILL PERMIT
THE GOVERNMENT TO RECOMMEND A HIGHER SENTENCE OR SET ASIDE
THE PLEA

11 This plea agreement is based on the understanding that, prior to
12 defendant's sentencing in this case, defendant has not committed or
13 been arrested for any offense not known to the Government prior to
14 defendant's sentencing. This plea agreement is further based on the
15 understanding that defendant has committed no criminal conduct since
16 defendant's arrest on the present charges, and that defendant will
17 commit no additional criminal conduct before sentencing. If defendant
18 has engaged in or engages in additional criminal conduct during this
19 period, or breaches any of the terms of any agreement with the
20 Government, the Government will not be bound by the recommendations
21 in this plea agreement, and may recommend any lawful sentence. In
22 addition, at its option, the Government may move to set aside the
23 plea.

XIII

ENTIRE AGREEMENT

26 This plea agreement embodies the entire agreement between the
27 parties and supersedes any other agreement, written or oral.

28 //

14

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OS CR 2098

1 XIV
2

3 MODIFICATION OF AGREEMENT MUST BE IN WRITING
4

No modification of this plea agreement shall be effective unless
in writing signed by all parties.

5 XV
6

7 DEFENDANT AND COUNSEL FULLY UNDERSTAND AGREEMENT
8

9 By signing this agreement, defendant certifies that defendant has
10 read it (or that it has been read to defendant in defendant's native
language). Defendant has discussed the terms of this agreement with
11 defense counsel and fully understands its meaning and effect.

12 XVI
13

14 DEFENDANT SATISFIED WITH COUNSEL
15

16 Defendant has consulted with counsel and is satisfied with
17 counsel's representation.
18

KAREN P. HEWITT
United States Attorney


W. MARK CONOVER
Assistant U.S. Attorney

DATED

6/18/08

DATED

6/18/08

~~HANNI FAKHOURY~~ KAREN M. STEVENS
Defense Counsel

IN ADDITION TO THE FOREGOING PROVISIONS TO WHICH I AGREE, I SWEAR
UNDER PENALTY OF PERJURY THAT THE FACTS IN THE "FACTUAL BASIS"
PARAGRAPH ABOVE ARE TRUE.

DATED

6/18/08

X RAFAEL SANTIAGO-VASQUEZ
Defendant